

COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

July 12, 2016

CERTIFIED RETURN RECEIPT MAIL

Patrick C. Fraizer
Pan-American Life Insurance Co
601 Poydras St.
New Orleans, LA 70130

Dear Fraizer:

Attached is a *Summons*, a *Complaint & Demand for Jury Trial*, and the *Plaintiff's First Set of Discovery Requests to Defendant* in the case of:

JANET HEINZE,

Plaintiff,

v.

PAN-AMERICAN LIFE INSURANCE
COMPANY and JOHN DOES 1-4,

Defendant,

originating in the District Court of the Eleventh Judicial District of the State of Montana, in and for the county of Flathead.

Service of process was made July 11, 2016, upon the Commissioner of Securities and Insurance, Montana State Auditor, in conformity with the provisions of the Montana Code. Please contact Darla Sautter at (406) 444-2726 with any questions.

Sincerely,

JESSE LASLOVICH
Chief Legal Counsel

JL/ds
Enclosures

cc: Alex K. Evans
Attorney for Plaintiff

Janet Heinze vs. Pan American Life Insurance Company

Filed: 1/3/2014
Subtype: Breach of Contract

Status History

| | |
|------|----------|
| Open | 1/3/2014 |
|------|----------|

Plaintiffs

Pl. no. 1 Heinze, Janet

Attorneys

| | | |
|---------------|--------------------|--------------|
| Evans, Alex K | (Primary attorney) | Send Notices |
|---------------|--------------------|--------------|

Defendants

Def. no. 1 Pan American Life Insurance Company

Judge History

| Date | Judge | Reason for Removal |
|----------|-----------------|--------------------|
| 1/3/2014 | Ortley, David M | Current |

Register of Actions

| Doc. Seq. | Entered | Filed | Text | Judge |
|-----------|------------|------------|---|-----------------|
| 1.000 | 01/07/2014 | 01/03/2014 | Complaint & Demand for Jury Trial / No summons issued | Ortley, David M |
| 2.000 | 07/08/2016 | 07/07/2016 | SUMMONS: Summons: Issued to Pan American Life Insurance Company on 7/7/2016; Service Fee of \$0.00. | Ortley, David M |

1 Alex K. Evans
2 Michael A. Bliven
3 BLIVEN & EVANS, TRIAL LAWYERS, P.C.
4 278 Fourth Avenue E.N.
5 Kalispell, MT 59901
6 Telephone: (406) 755-6828

CLERK OF DISTRICT COURT

2014 JAN -3 PM 3:14

FILED

BY KJ
DEPUTY

7 Attorneys for Plaintiff

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

8 **JANET HEINZE,**

9 Plaintiff,

10 v.

11 **PAN-AMERICAN LIFE INSURANCE
12 COMPANY AND JOHN DOES 1-4,**
13 Defendants.

Cause No. DV - 14-006 (A)

**DAVID M ORTLEY
COMPLAINT AND DEMAND
FOR JURY TRIAL**

14 **COMES NOW**, Plaintiff, JANET HEINZE and hereby complains and alleges as follows:

15 1. Jurisdiction for this cause lies in within the State of Montana, in that the claim denial and
16 injuries which are the subject of this Complaint occurred within the State of Montana.

17 2. This cause arises from an injury sustained on a boat, which occurred on or about January
18 4, 2012.

19 3. Venue is proper in the above Court in that Plaintiff is a resident of Kalispell, Flathead
20 County, Montana.

21 4. At all material times, Plaintiff, a pedestrian, Heinze was a resident of Flathead County,
22 Montana.

23 5. At all material times herein, Defendant Pan-American Life Insurance Company
24 (hereinafter "Pan-American") sold insurance policies and collected premiums for those
25

26 **COMPLAINT, REQUEST FOR DECLARATORY JUDGMENT AND DEMAND FOR JURY TRIAL**

27 **PAGE 1**

1 policies. All insurance policies at issue were sold within the State of Montana to
2 Montana citizens and residents.

3 6. At all material times, Janet Heinze was insured by Defendant Pan-American.
4 7. On or November 19, 2011, Janet Heinze purchased an Individual Short Term Medical
5 Expense Insurance Policy from Defendant Pan-American.
6 8. Defendant Pan-American represented to Ms. Heinze that the policy would provide
7 coverage for medical expenses.
8 9. On or about January 4, 2012, Ms. Heinze incurred injuries in a boat.
9 10. Plaintiff filed a claim with Pan-American.
10 11. Defendant Pan-American refused to make payment of any benefits.
11 12. Defendant Pan-American, denied and refused to make payment to Plaintiff under her
12 “Individual Short Term Medical Expense Insurance Policy.”
13

14 **COUNT I**

15 **BREACH OF CONTRACT**

16 13. Plaintiff re-alleges the allegations contained in paragraphs 1 through 12.
17 14. Plaintiff paid valuable consideration to Pan-American for health insurance benefits under
18 the Individual Short Term Medical Expense Insurance Policy.
19 15. Defendant Pan-American had a contractual obligation to pay submitted medical expenses
20 under its Individual Short Term Medical Expense Insurance Policy.
21 16. Plaintiff provided proof of loss, medical records and bills to defendant Pan-American.
22 17. Plaintiff requested Defendant Pan American to make payment for medical expenses
23 incurred as a result of Plaintiff’s injury.
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COMPLAINT, REQUEST FOR DECLARATORY JUDGMENT AND DEMAND FOR JURY TRIAL
PAGE 2

- 1 18. Defendant Pan-American refused to make payment for any of Plaintiff's medical
- 2 expenses.
- 3 19. Defendant Pan-American had a contractual duty to pay for Plaintiff's medical expenses
- 4 incurred as a result of the boat injury.
- 5 20. Defendant breached its contractual duty by refusing to make payment for Plaintiff's
- 6 claim.
- 7 21. Defendant's contractual breach caused Plaintiff financial injury.

9 **COUNT II**

10 **COMMON LAW BAD FAITH**

- 11 22. Plaintiff re-alleges the allegations contained in paragraphs 1 through 21.
- 12 23. Defendant had a duty to pay medical expenses.
- 13 24. Plaintiff sent Defendant records and bills asking Defendant to pay the claim.
- 14 25. Defendant had a duty to pay Plaintiff's medical expenses related to the boat injury.
- 15 26. Defendant repeatedly refused to pay Plaintiff's claim.
- 16 27. Defendant rejected Plaintiff's claim for payment.
- 17 28. Defendant's rejection of Plaintiff's claim was unreasonable.
- 18 29. Defendant violated its fiduciary duty to Plaintiff when it unreasonably rejected Plaintiff's
- 19 claim.
- 20 30. Defendant's rejection caused injury to Plaintiff.
- 21 31. Defendant's rejection of Plaintiff's claim was in bad faith.

24 **COUNT III**

25 **UNFAIR CLAIMS SETTLEMENT PRACTICES(Violations of Sec. 33-18-201, MCA and Sec.**

26 **33-18-242, MCA).**

27
28 **COMPLAINT, REQUEST FOR DECLARATORY JUDGMENT AND DEMAND FOR JURY TRIAL**
PAGE 3

- 1 32. Plaintiff re-alleges the allegations contained in paragraphs 1 through 31.
- 2 33. Defendant misrepresented facts and policy provisions relating to coverage at issue.
- 3 34. Defendant failed to pay Plaintiff's claim after liability became reasonable clear.
- 4 35. Defendant advertised that it would pay Plaintiff's medical expenses.
- 5 36. Plaintiff was justified in relying upon Defendant's representation.
- 6 37. Defendant refused to pay medical expenses Plaintiff incurred as a result of a Pedestrian
- 7 Accident.
- 8 38. Defendant's actions have injured Plaintiff.
- 9 39. Defendant's refusal to pay Plaintiff's claim is in violation of Sec. 33-18-201, MCA and
- 10 Sec. 33-18-242, MCA.

12 **COUNT IV**

13 **NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**

- 15 40. Plaintiff re-alleges the allegations contained in paragraphs 1 through 39.
- 16 41. Defendant Pan-American is aware of Plaintiff's outstanding medical expenses and to
- 17 make timely payment under the policy for which Plaintiff purchased.
- 18 42. Defendant Pan American's failure to pay has caused Plaintiff stress, depression, mental
- 19 anguish and anxiety.
- 20 43. Plaintiff's emotional distress was a reasonably foreseeable consequence of Pan
- 21 American's failure to timely make payment under the Pedestrian Accident coverage
- 22 portion of Plaintiff's policy.

24 **COUNT V**

25 **REQUEST FOR DECLARATORY JUDGMENT**

- 26 44. Plaintiff hereby re-alleges the allegations set forth in counts 1 through 43.

28 **COMPLAINT, REQUEST FOR DECLARATORY JUDGMENT AND DEMAND FOR JURY TRIAL**

PAGE 4

1 45. Plaintiff, pursuant to Sec. 27-8-201, MCA *et. seq.*, and Rule 57 M.R.Civ.P, brings this
2 action for declaratory judgment.

3 46. Plaintiff has provided proof of loss to Pan-American for covered medical expenses.

4 47. Defendant Pan American has failed to pay Plaintiff for her medical expenses.

5 48. Plaintiff requests this Honorable Court to declare that Defendant Pan American is
6 obligated to make necessary payment of economic damages to Plaintiff Janet Heinze
7 pursuant to the Montana law.

8 49. Plaintiff has undisputed damages that Defendant Pan American has failed to pay.

9 50. Defendant Pan American has been asked to pay medical expenses but refused to do so in
10 a timely fashion.

11 51. Plaintiff requests that the Court enter judgment against Defendant Pan American on the
12 above issues and order them to make payment of damages previously submitted to
13 Defendant Pan American and all undisputed damages, but not paid to Plaintiff, without
14 condition or release.

15

16

17 **COUNT V**

18 **NEGLIGENCE**

19 **(as to Does 1-4)**

20 52. Plaintiff hereby re-alleges the allegations set forth in counts 1 through 51.

21 53. Defendants owed Plaintiff a duty to pay her medical expenses under the insurance policy
22 and refused to do so.

23 54. Plaintiff hereby re-alleges the allegations set forth in counts 1 through 53, and also
24 alleges alternatively that individuals or entities denoted as Does 1-4 were negligent and
25 responsible for injury to Plaintiff. Plaintiff may be uncertain as to the corporate identity
26

27

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COMPLAINT, REQUEST FOR DECLARATORY JUDGMENT AND DEMAND FOR JURY TRIAL
PAGE 5

1 of Does 1-4 and are presumed to be parent corporations or subsidiaries acting in a unified
2 matter on behalf or for Defendant National Union.
3
4

5 **WHEREFORE**, Plaintiff prays for judgment against all Defendants as follows:
6

- 7 1. For all general and compensatory damages proved and awarded by the jury or court;
- 8 2. For all special damages proved and awarded by the jury or court;
- 9 3. For all other damages allowed by law and awarded by the jury;
- 10 4. For Punitive damages;
- 11 5. For Plaintiff's attorney fees;
- 12 6. For Plaintiffs costs and disbursements in this action; and
- 13 7. For such other and further relief as the Court deems just and equitable under the
14 circumstances.

15 **WHEREFORE**, Plaintiff prays for judgment against Defendant Pan American regarding the
16 Request for Declaratory Judgment pursuant to Montana law as follows:

- 17 1. That the Court declares that Defendant Pan American is obligated to pay for Plaintiff's
18 incurred medical expenses.
- 19 2. That the Court declares Defendant Pan American's responsibility to pay for all
20 uncontested damages and also reasonable attorneys fees, which have resulted from its
21 unlawful refusal to pay uncontested damages.
- 22 3. That the Defendants be required to effectuate a fair, equitable and prompt settlement as to
23 the economic damages set forth herein without condition or release.
- 24 4. For attorney's fees, for damages recovered for the insurance contract pursuant to Sec. 27-
25 8-313, MCA, *Renville, Buxbaum, and Brewer.*

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28 **COMPLAINT, REQUEST FOR DECLARATORY JUDGMENT AND DEMAND FOR JURY TRIAL**
PAGE 6

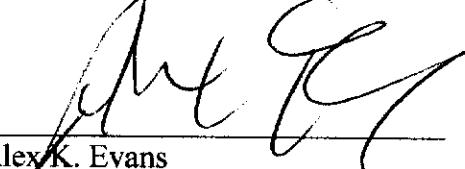
- 1 5. For attorneys fees based upon the inherent discretion of the Court as noted in *Mountain*
2 *W. Farm Bureau Mut. Ins. Co. v. Brewer*, 69 P.3d 652, 660 (2003) and *Renville v.*
3 *Farmers Ins. Exchange*, 2004 MT 366, ¶ 23-32, 324 Mont. 509, ¶ 23-32.
4
- 6 6. For such other and further relief as the Court deems just and equitable under the
circumstances.

7 **JURY DEMAND**

8 1. Plaintiff hereby demands a jury trial on all claims triable by right.

9 Dated: January 3, 2014

10 11 BLIVEN & EVANS, TRIAL LAWYERS, P.C.

12 13 14 By: 

15 Alex K. Evans

16 BLIVEN & EVANS, TRIAL LAWYERS, P.C.

17 278 Fourth Avenue East North

18 Kalispell, MT 59901

19 Attorneys for Plaintiff

1 Alex K. Evans
2 Michael A. Bliven
3 BLIVEN & EVANS TRIAL LAWYERS, P.C.
4 278 Fourth Avenue E.N.
5 Kalispell, MT 59901
6 Telephone: (406) 755-6828

7 Attorneys for Plaintiff

8 **MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY**

9 **JANET HEINZE,**

10 Plaintiff,

11 Cause No. DV-14-006 D

12 v.

13 **PAN-AMERICAN LIFE INSURANCE
14 COMPANY AND JOHN DOES 1-4,
15 Defendants.**

16 **SUMMONS**

17 THE STATE OF MONTANA SENDS GREETINGS TO THE ABOVE NAMED
18 DEFENDANT: PAN-AMERICAN LIFE INSURANCE COMPANY

19 YOU ARE HEREBY SUMMONED to answer the **Complaint** in this action which is
20 filed in the office of the Clerk of this Court, a copy of which is herewith served upon you, and to
21 file your response and serve a copy thereof upon the Plaintiff's Attorney within thirty (30) days
22 after the service of this summons, exclusive of the day of service; and in case of your failure to
23 appear or respond, judgment will be taken against you by default for the relief prayed for in the
24 Complaint.

25 WITNESS MY HAND AND SEAL OF SAID COURT this 27th day of
26 July, 2016.  TM

27 BLIVEN & EVANS TRIAL LAWYERS, P.C.

28 By: 

Alex K. Evans
Attorney for Plaintiff
278 Fourth Ave. East North
Kalispell, MT 59901

CLERK OF DISTRICT COURT
PEG L ALLISON

Clerk of Court

CHELSEA REYES
By: 
Deputy Clerk

COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER

OFFICE OF THE MONTANA
STATE AUDITOR



July 12, 2016

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Sincerely,

A handwritten signature in black ink.

JESSE LASLOVICH
Chief Legal Counsel

JL/ds
Enclosures

cc: Alex K. Evans
Attorney for Plaintiff